

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Lynchburg Division

IN RE:

MICHAEL VERNON GIANNINI

Debtor

Case No. 11-60465-WEA
(Chapter 13)

ONEWEST BANK, FSB

Movant

v.

MICHAEL VERNON GIANNINI and
HERBERT L. BESKIN, Trustee

Respondents

CONSENT ORDER MODIFYING AUTOMATIC STAY

Upon consideration of the Motion for Relief from Automatic Stay (“Motion”) filed by OneWest Bank, FSB (“OneWest”) any response thereto, the consent of the Debtor having been given, and good cause having been shown; and

WHEREAS, on or about July 19, 2007, the Debtor executed and delivered to IndyMac Bank, F.S.B. a Note in the amount of TWO HUNDRED SEVENTY-NINE THOUSAND FIVE HUNDRED and 00/100 DOLLARS (\$279,500.00), plus interest at the rate of 6.875% per annum, to be paid over thirty (30) years; and

Kristen J. Misleh, Bar #75205
kmisleh@atlanticlawgrp.com
Devon Cipperly, Bar #78364
dcipperly@atlanticlawgrp.com
Atlantic Law Group, LLC
P.O. Box 2548
Leesburg, Virginia 20177
(703) 777-7101

WHEREAS, to secure the repayment of the sums due under the Note, the Debtor executed and delivered to IndyMac Bank, F.S.B. a Deed of Trust dated July 19, 2007, encumbering the real property (“Property”) more particularly described in the Deed of Trust as:

All that certain parcel of land lying and being situated in the County of Charlottesville City, State of VA, to-wit:

All those certain lots or parcels of land situated in the City of Charlottesville, Virginia, in the territory annexed by the City, January 1, 1963, being Lots 6 and 15, Block F on plat of Albemarle Golf Club, Inc. Property, of Record in the Clerk's Office of the Circuit Court of Albemarle County in Deed Book 205, Page 64.

which has the address of 1411 Chesapeake Street, Charlottesville, VA 22902; and

WHEREAS, the Debtor has failed to make five (5) post-petition payments in the amount of \$2,111.62 each for the months of December, 2012 through April, 2013 and is in arrears post-petition for \$10,810.72 which amount includes \$85.00 in Broker Price Opinion fees and \$650.00 representing attorneys’ fees and costs incurred by OneWest in filing the Motion for Relief from Automatic Stay; and

WHEREAS, the parties desire to resolve this matter without the risks and costs of litigation.

It is by the United States Bankruptcy Court for the Western District of Virginia, Lynchburg Division,

ORDERED, that the automatic stay is modified as follows:

- (a) The Debtor shall cure the Arrearage by making the following payments inclusive of the fees and costs (“Arrearage Payment”):

May 15, 2013	\$900.89
June 15, 2013	\$900.89
July 15, 2013	\$900.89
August 15, 2013	\$900.89

September 15, 2013	\$900.89
October 15, 2013	\$900.89
November 15, 2013	\$900.89
December 15, 2013	\$900.89
January 15, 2014	\$900.89
February 15, 2014	\$900.89
March 15, 2014	\$900.89
April 15, 2014	\$900.93;

- (b) In addition to curing the Arrearage, the Debtor shall resume making regular monthly payments in the amount of \$2,111.62 subject to adjustment as due under the Note beginning on May 1, 2013 and continuing on the same day of each and every month thereafter until the Note is paid in full; and
- (c) All payments must be sent directly to OneWest Bank, FSB, Attn: Cashiering Department, 6900 Beatrice Drive, Kalamazoo, MI 49009; and it is further

ORDERED, that in the event that any of the payments described herein are not timely made, then OneWest shall serve a notice of default to Debtor's last known address, and to his counsel at the address shown hereunder and, if such default is not cured within fifteen (15) days ("Cure Period") from the date noted on the certificate of service along with any payment that has become due subsequent to the Notice of Default then, without further notice or order of this Court, OneWest is authorized to submit to Court an Order Terminating Automatic Stay. Furthermore, the Debtor may avail himself of only one (1) Cure Period during any twelve (12) month period. Upon the Debtor's second failure to remit a payment in compliance with this Consent Order within any twelve (12) month period, OneWest need not send the Debtor a notice of default but may instead submit to Court an Order Terminating Automatic Stay; and it is further


ORDERED, acceptance of any partial payments which do not provide to fully cure the amount stated in the Notice of Default and any subsequent payments which may become due does not constitute a cure of the default; and it is further

ORDERED, that in the event that the Automatic Stay is terminated, the Chapter 13 Trustee shall be relieved of any and all obligation to cure arrearage due to Movant, its successors or assigns; and it is further

ORDERED, that to the extent this case is dismissed, discharged, converted to a case under Chapter 7 or closed and payments on the Note are not contractually current, OneWest may exercise its legal rights under applicable law with respect to the Property.

BY THE COURT:

Dated: April 26, 2013



William E. Anderson
U.S. Bankruptcy Court Judge

WE ASK FOR THIS:

/s/ Devon Cipperly
Kristen J. Misleh, Bar #75205
kmisleh@atlanticlawgrp.com
Devon Cipperly, Bar #78364
dcipperly@atlanticlawgrp.com
Atlantic Law Group, LLC
P.O. Box 2548
Leesburg, Virginia 20177
(703) 777-7101

/s/ C. Lamar Garren

C. Lamar Garren, Esquire
Scott & Kroner, PC
P.O. Box 2737
Charlottesville, VA 22902
Attorney for the Debtor
Re: Case No. 11-60465-WEA

SEEN:

/s/ Herbert L. Beskin

Herbert L. Beskin, Trustee
P.O. Box 2103
Charlottesville, VA 22902

Copies to:

Kristen J. Misleh, Esquire
Devon Cipperly, Esquire
Atlantic Law Group, LLC
P.O. Box 2548
Leesburg, Virginia 20177
(703) 777-7101

Michael Vernon Giannini
1411 Chesapeake St.
Charlottesville, VA 22902
Debtor

C. Lamar Garren, Esquire
Scott & Kroner, PC
P.O. Box 2737
Charlottesville, VA 22902
Attorney for the Debtor

Herbert L. Beskin, Trustee
PO Box 2103
Charlottesville, VA 22902